



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR comments on the draft General Comment on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)

1. UNHCR welcomes the decision by the Committee on Economic Cultural and Social Rights (“the Committee”) to prepare a General Comment on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights) (“the draft General Comment”), and is grateful for the opportunity to provide comments.
2. In providing these comments, UNHCR seeks to draw attention to two important points. Firstly, refugees and stateless persons constitute an important group of persons with specific vulnerabilities in exercising their work rights. Secondly, although refugees and stateless persons’ work rights are more specifically protected under the 1951 Convention relating to the Status of Refugees (1951 Convention)¹ and its 1967 Protocol relating to the Status of Refugees² and the 1954 Convention relating to the Protection of Stateless Persons (1954 Convention), respectively, the ICESCR constitutes an important additional source of rights for both groups.

UNHCR’s mandate

3. UNHCR is the global body with a mandate to provide international protection and to search for solutions for refugees and asylum-seekers. In addition, it has been granted a responsibility to supervise the application of international instruments for the protection of refugees and asylum-seekers, in particular the 1951 Convention relating to the Status of Refugees (“the 1951 Convention”) and its 1967 Protocol.³ States parties to these instruments are required to cooperate with UNHCR in the exercise of its functions.
4. UNHCR has also been formally mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people.⁴
5. As part of its mandate, UNHCR has a direct interest in the right to work for – and in that regard to just and favourable conditions of work for – asylum-seekers, refugees and stateless persons.

¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series No. 2545, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>

² UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations Treaty Series, vol. 606, page 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>

³ 1950 Statute of the Office of the High Commissioner (annexed to UN General Assembly Resolution 428(V) of 14 December 1950), para. 8(a); Article 35, 1951 Convention and Article II, 1967 Protocol; Article 8, Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001 U.N.T.S. 45, available at: <http://www.refworld.org/docid/3ae6b36018.html>; *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, available at: <http://www.refworld.org/docid/3ae6b36ec.html>; Article 78(1) European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, available at: <http://www.refworld.org/docid/4b17a07e2.html>; Declaration 17 to the Treaty of Amsterdam, European Union, *Declaration on Article 73k of the Treaty establishing the European Community*, OJ C 340/134 of 10.11.1997, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17:EN:HTML>; Declaration on Article 73k of the Treaty establishing the European Community; Article 21 European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L 337/9-337/26; 20.12.2011, 2011/95/EU, available at: <http://www.refworld.org/docid/4f197df02.html>; Article 29(c) European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: <http://www.refworld.org/docid/51d29b224.html>

⁴ UN General Assembly resolutions 3274 (XXIV) and 31/36 designated UNHCR as the body mandated to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities. In 1995, UN General Assembly resolution 50/152 conferred upon UNHCR a global mandate for the prevention and reduction of statelessness and for the protection of stateless persons.

Background

6. The ability to engage in decent work is a fundamental human right, integral to human dignity and self-respect. For refugees, asylum-seekers and stateless persons, it can be crucial to their survival and self-sufficiency. Indeed, without work rights, they cannot legally access labour markets, open businesses, trade in their goods, or earn wages. Work rights assist them to provide for their families and to contribute to their hosting communities.
7. In exercising work rights, refugees, asylum-seekers and stateless persons can bring new skills, entrepreneurship, professional experience, goods and services to host countries, filling labour and skills shortages or gaps in local markets⁵ and benefiting refugee as well as host communities through diversification, growth and prosperity.⁶ Commercial activities of refugees help create job opportunities for other refugees as well as locals. Furthermore, access to legal work improves the stability and safety of communities as it minimises reliance or recourse to negative coping strategies such as survival sex. Additionally, working allows for more interaction between refugees and host communities, and helps foster trust and peaceful coexistence. Working also prepares refugees for longer-term solutions to their predicament, whether that they return to their countries of origin, resettle in third countries or locally integrate and naturalise in the country of stay.
8. However, many States do not allow refugees access to their labour markets. Many are thus obliged to scrape by in the informal economy, where they risk exploitation, arrest and detention. Obstacles to exercising the right to work peacefully by refugees and stateless persons are often fuelled by anti-refugee/immigrant rhetoric, xenophobia and formal and informal discrimination. Practical barriers to work include costly work permits, failure to recognise foreign acquired diplomas, language, restrictions on freedom of movement and lack of access to land for cultivation. In many other countries, legal barriers prevent refugees from working. Twenty-eight States parties to the 1951 Convention and its 1967 Protocol, which contains important provisions on the right to work, have entered reservations to these provisions.⁷ Further, a number of other States do not have appropriate enabling legislation in place. The lack of access to employment can contribute to perpetuating the often difficult economic circumstances of asylum-seekers, refugees and stateless persons in contravention of their right to dignity.⁸
9. Refugees and stateless persons are also entitled to just and favourable conditions *at work*, on the basis of non-discrimination on account of their immigration or refugee status, or nationality. Apart from benefiting from the standards set out in the draft General Comment, they also benefit from specific

⁵ UNHCR Global Livelihoods Strategy 2014-2018, available at: <http://www.unhcr.org/530f107b6.html>.

⁶ UNHCR Executive Committee Conclusion No. 50 (IIIXI) – 1988 paras (j) and (k); UNHCR Executive Committee Conclusion No. 58 (XL) – 1989 para (b); UNHCR Executive Committee Conclusion No. 64 (XLI) – 1990 para (a); UNHCR Executive Committee Conclusion No. 88 L – 1999 para (b); UNHCR Executive Committee Conclusion No. 93 (LIII) – 2002 (b); UNHCR Executive Committee Conclusion No. 95 (LIV) para (h); UNHCR Executive Committee Conclusion No. 100 (LV) – 2004 para (l); UNHCR Executive Committee Conclusion No. 101 (LV) – 2004 para (o); UNHCR Executive Committee Conclusion No. 102 (LVI) – 2005 para (m); UNHCR Executive Committee Conclusion No. 104 (LVI) – 2005, para (m) and (p); UNHCR Executive Committee Conclusion No. 105 (LVII) – 2006 paras (e) and (o); UNHCR Executive Committee Conclusion No. 107 (LVIII) – 2007 paras (c) and (h); UNHCR Executive Committee Conclusion No. 108 (LIX) – 2008 para (n); UNHCR Executive Committee Conclusion No. 109 (LXI) – 2009 para (j) all available at: <http://www.unhcr.org/pages/49e6c6dd6.html>. See also Alexander Betts, Louise Bloom, Josiah Kaplan, and Naohiko Omata, *Refugee Economies: Rethinking Popular Assumptions*, Oxford Refugee Studies Centre, June 2014, available at: <http://www.rsc.ox.ac.uk/refugeeeconomies>

⁷ Twenty-seven States entered reservations to the 1951 Convention provisions on work rights plus one entered a reservation to the 1967 Protocol relating to Status of Refugees. Twenty-six are of these States are parties to the International Covenant on Economic, Social and Cultural Rights.

⁸ This has been recognized in the cases of *Minister of Home Affairs and Others v. Watchenuka and Another*, (010/2003) [2003] ZASCA 142 (28 November 2003), South Africa: Supreme Court of Appeal, 28 November 2003, available at: <http://www.refworld.org/docid/47fdb093a7.html> and *Secretary of State for the Home Department v. Wayoka Limbuela, Binyam Tefera Tesema and Yusif Adam*, [2004] EWCA Civ 540, United Kingdom: Court of Appeal (England and Wales), 21 May 2004, available at: <http://www.refworld.org/docid/42494f5b4.html>

provisions in the 1951 Convention (repeated in the 1954 Convention relating to the Status of Stateless Persons), which are set out below. There is no justification for differential treatment in conditions of employment for asylum-seekers, refugees or stateless persons; and UNHCR would welcome specific clarification on this point in the Committee's General Comment.

Work rights for refugees

10. Apart from benefiting from general human rights law and the rights contained in the ICESCR, the 1951 Convention explicitly acknowledges the importance of socio-economic rights for refugees, containing four specific provisions on access to work and rights at work: the right to wage earning employment (Article 17), the right to self-employment (Article 18), the right to practice a liberal profession (Article 19), and the right to benefit from labour regulations (Article 24).⁹
11. Other relevant provisions of the 1951 Convention include Articles: 2 (general duties, implicitly including duty to pay taxes and abide by rules relating to employment), 3 (non-discrimination), 6 (waiver of requirements that refugees cannot fulfil because of their position as a refugee), 10 (continuity of residence), 13 (acquisition of movable and immovable property, and leases and contracts), 14 (protection of artistic rights and industrial property), 15 (right of association), 16 (access to courts), 23 (social welfare), 25 (administrative assistance), 26 (freedom of movement), 27 (identity papers), 29 (fiscal charges) and 30 (transfer of assets).

Labour legislation

12. Article 24 of the 1951 Convention is the most relevant to the focus of the draft General Comment. In particular Article 24(1)(a) reads as follows:

"1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;"

13. Article 24 of the 1951 Convention deals explicitly with labour legislation and notes its application to refugees on an equivalent basis to nationals. There shall therefore be no discrimination between nationals and refugees in this area. Article 24(1)(b) also deals with social security aspects relating to employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and other areas. Article 24(1)(b) notes that special arrangements may be needed where, for example, refugees do not fulfil the contribution conditions for the award of a normal pension. In this regard, special measures may need to be taken to accommodate the situation of refugees. This may include granting them certain basic social security benefits (essential to secure a basic standard of living, such as old-age benefits and family benefits) despite the fact that they may not have had the opportunity to contribute to the relevant schemes (due *inter alia* to their short period of residence in the country of asylum).
14. Further, Article 24(2) recognises the right to compensation for the death of a refugee resulting from employment injury or occupational disease, noting that this right shall not be affected by the fact that the beneficiary resides outside the territory of a Contracting State and reflecting the fact that refugees' families are often split during their displacement. Article 24(3) notes that the benefits of agreements between States shall be extended to refugees, concerning the maintenance of acquired rights.

⁹ These provisions are mirrored in the 1954 Convention.

Social security

15. Finally, Article 24 of the 1951 Convention read together with Article 23 (public relief) provides a framework of social assistance and security for refugees who are lawfully staying in the country of asylum. Article 23 seeks to ensure that refugees are entitled to benefit from the national social assistance and welfare schemes enjoyed by nationals, even if they do not meet any of the conditions of local residence or affiliation which may be required of nationals. The article must be given a broad interpretation, and includes, *inter alia*, relief and assistance to persons in need due to illness, age, physical or mental impairment, or other circumstances, as well as medical care.¹⁰

Right to join trade unions and business associations

16. Article 15 of the 1951 Convention allows lawfully staying refugees to form or join trade unions and associations with cultural, sports, social or philanthropic mandates. Workers' associations of refugees help prevent refugees from being exploited in the labour market. Appropriate representation of refugee women in such organisations is also important. Refugees who have started their own businesses are also entitled to join business associations.¹¹

Documentation

17. Lack of identity papers can form a barrier to entering the labour market or to setting up a business. Problems with documentation can also make it difficult or impossible for refugees to access micro credit facilities, banking and other services, or other sources of start-up capital.¹² Documentation is also critical to avoid penalization for working without proper authorization and documentation and minimizes the risk of exploitation.¹³ States parties to the 1951 Convention have an obligation to provide identity documents to all refugees and asylum-seekers in their territory who do not have valid travel documents (Article 27 of the 1951 Convention).¹⁴ Through the obligation under Article 25 of the 1951 Convention to provide administrative assistance, States should provide refugees with facilitated access to the liberal professions through for example the provision of documents verifying education and qualifications. Procedures for recognition should lead to a statement of recognition that is authoritative and accepted by employers. Certain testing may be required in order to verify qualifications in certain procedures.

Protection from exploitation

18. When refugees have a safe way of generating income, they are better able to avoid negative coping strategies such as criminal activities, survival sex and unsafe labour and will be less exposed to exploitation. Through denying refugees and asylum-seekers access to work, psychological depression and other mental health problems can also be exacerbated and can hinder long-term integration and voluntary repatriation.
19. Refugee women and children are particularly at risk of abuse and exploitation, as are refugees with disabilities. UNHCR is particularly concerned about the protection of refugee children and youth from any form of economic exploitation or forced labour.¹⁵ Particular attention must be paid to providing

¹⁰ A. Grahl-Madsen, *Commentary on the Refugee Convention 1951* (1963).

¹¹ UNHCR Livelihoods Strategy supra note 5, p. 20.

¹² UNHCR, *The implementation of UNHCR's Policy on Refugee Protection and Solutions in Urban Areas, Global Survey, 2012*, at p. 35, available at: <http://www.unhcr.org/516d658c9.html>.

¹³ University of Michigan Law School, *The Michigan Guidelines on the Right to Work*, 16 March 2010, available at: <http://www.refworld.org/docid/4bbaf1242.html>, para 24.

¹⁴ Grahl-Madsen supra note 10 at pp. 114-115. The obligation to provide refugees with identification documents is also reiterated in a number of UNHCR Executive Committee Conclusions: Executive Committee Conclusion No. 91 (LII), 2001 *Registration of Refugees and Asylum-Seekers*. See also Michigan Guidelines, supra note 14 at para 25.

¹⁵ UN High Commissioner for Refugees (UNHCR), *Child protection Issue Brief: Child Labour*, January 2014, available at: <http://www.refworld.org/docid/53fc38804.html>. See also Michigan Guidelines supra note 14 at paras 1 and 25.

education and training opportunities for refugee children and adolescents to minimise their vulnerability to all forms of exploitation including recruitment into armed groups, sexual slavery, underage or early marriage, and the worst forms of child labour. It will also mean they are able to engage in appropriate employment later on.

Internally displaced persons

20. UNHCR also has a non-exclusive mandate for the protection of internally displaced persons (IDPs) and has been authorized by the General Assembly to be involved operationally under certain circumstances in enhancing protection and providing humanitarian assistance to IDPs through special operations.¹⁶
21. As nationals of the country in which they are displaced, IDPs are entitled to the enjoyment of the rights in the ICESCR on the same basis as other nationals.¹⁷ The statements contained in the General Comment therefore directly apply to IDPs. However, the fact of their displacement, including in very extreme circumstances such as armed conflict, can lead to the disruption of work and the need to find new employment or business opportunities; loss, destruction or expiry of documentation required to establish their credentials, identity or rights; or a break with ordinary pension or other rules relating to entitlements. This may require the State to put in place special measures to accommodate the particular situation of IDPs, to facilitate their integration into the workforce, to minimise risks of exploitation and to make exceptions to rules that they would ordinarily be able to fulfil but for their dislocation from their employment in their places of origin (e.g. in relation to access health care or pensions connected with employment).

Recommendations for inclusion in the draft General Comment

22. UNHCR recommends that in view of the particular circumstances faced by refugees and stateless persons, that the Committee consider including a specific reference to refugees and stateless persons under the heading “Special topics of broad application” at page 11. We would recommend that this paragraph read along the following lines:

Refugee workers: Despite the specific work rights afforded to refugees under the 1951 Convention relating to the Status of Refugees [footnote Articles 17, 18 and 19, 1951 Convention], they remain vulnerable to exploitation, discrimination and abuse in the work place. Pending the determination of claims for international protection, asylum-seekers who are not allowed to work formally are often forced to turn to the informal market for survival. In many countries, refugees are not formally allowed to work or face practical barriers such as costly work permits, language restrictions or failure to recognise foreign acquired diplomas. Because of their often precarious or tolerated status, they may be less well paid than nationals, have longer working hours and more dangerous working conditions. Refugee women and children should be protected from exploitation. States parties must enact legislation enabling refugees to work and providing them with conditions of employment no less favourable than nationals.

23. We would welcome a reference to refugee women and children in the paragraphs on exploitation at paragraph 48 (i) and (ii).
24. UNHCR considers that in listing to whom the right to just and favourable conditions of work applies, refugees and stateless persons should also be listed in paragraph 6, paragraph 12 (citing in the footnote

¹⁶ See GA res. 48/116, 20 December 1993, para. 12, as well as for more details UNHCR, *Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees*, UN doc. EC/50/SC/INF.2, which was issued in March 2000 and presented to the Standing Committee.

¹⁷ UN High Commissioner for Refugees (UNHCR), *Guiding Principles on Internal Displacement*, principle 22 (1) (b), 22 July 1998, ADM 1.1,PRL 12.1, PR00/98/109, available at: <http://www.refworld.org/docid/3c3da07f7.html>

Article 23 1(a) of the 1951 and 1954 Conventions), paragraph 49 (second sentence), paragraph 58 (last sentence) and paragraph 64 (a).

25. UNHCR recommends that the Committee include under Section II (iii), a caution to ensure that States do not discriminate against refugees based on their refugee status. This would add further precision to the reference in paragraph 12 to ground of discrimination currently referred to as “migrant [or health] status”. The same comment applies to paragraph 33.
26. UNHCR notes that the first mention of work in the informal sector is made at paragraph 55 only. UNHCR considers that given the scale of the informal labour sector worldwide, work in the informal sector should be considered in greater depth. UNHCR considers that this is particularly important for refugees and stateless persons because in the absence of legal avenues for work, they are often forced to work in the informal sector.
27. Labour mobility through regional and bilateral agreements can also include refugees.¹⁸ In this regard UNHCR recommends that the Committee reflect a reference to refugees in paragraph 72 (second sentence).
28. In respect of recommendations in III. Obligations, UNHCR would recommend that accession to other international instruments with work provisions be encouraged, such as the 1951 and 1954 Conventions, and that reservations to right to work provisions in those instruments be removed. In relation to “Core obligations”, the addition in paragraph 64(a) of “migrant or refugee status or nationality” would reflect expressly the prohibition as it applies to these specific groups.
29. In paragraph 69, there is reference to conflict and post-conflict situations. Here some reference to the need to ensure that humanitarian and development actors such as UNHCR and UNDP collaborate to ensure that those affected by such situations can progress towards work as soon as possible and minimise reliance on humanitarian assistance and dependency.

UNHCR, Division of International Protection, May 2015

¹⁸ UNHCR Established a Memorandum of Understanding (1983) with the ILO and in 2012 explored how labour mobility can facilitate durable solutions without undermining protection principles. UNHCR and the ILO co-organized a workshop in Geneva in September 2012 on "Labour Mobility for Refugees", more information available at: <http://www.unhcr.org/pages/509a85da6.html>